

CHAPTER 102
WAREHOUSED MERCHANDISE

191—102.1(523A,82GA,SF559) Funeral and cemetery merchandise delivered to the purchaser or warehoused. If a preneed seller receives approval in writing from the commissioner, the trust requirements of Iowa Code sections 523A.201 and 523A.202 do not apply, either to payments for outer burial containers made of either polystyrene or polypropylene or to cemetery merchandise delivered to the purchaser or stored in an independent third-party storage facility not owned or controlled by the preneed seller.

191—102.2(523A,82GA,SF559) Storage facilities. The commissioner shall approve a storage facility's application to be designated as an approved storage facility for purposes of rule 102.1(523A,82GA,SF559) upon satisfaction of the following conditions:

102.2(1) Insurance coverage and financial condition. The applicant must demonstrate that adequate insurance against loss and damage has been purchased and that the applicant's financial condition is commensurate with any financial obligations assumed in the operation of the storage facility. Proof of the applicant's financial condition shall include submission of audited financial statements completed in accordance with generally accepted accounting principles, which shall include the following:

- a. A balance sheet prepared as of a date within 120 days prior to the application; and
- b. For each of the three fiscal years preceding the date of the balance sheet or, if the applicant has been in existence less than three years, for the period of the applicant's existence, a profit and loss statement and any changes in financial position.

102.2(2) Record-keeping system. The applicant must demonstrate that the applicant has an adequate record-keeping system that records for each item in storage: an identification and a description; the ownership, name, and address of the preneed seller; an order number; the order date; and the storage date. The record-keeping system also must be able to provide an aggregate listing and numerical totals for the entire storage facility and for each state or province.

102.2(3) Title. The storage facility must undertake to deliver a minimum of two copies of some form of title certificate to the preneed seller, with at least one copy marked as the preneed seller's copy and at least one copy marked as the purchaser's copy. Each preneed seller shall be required to deliver at least one copy to the purchaser and to retain one copy in the preneed seller's records. Certificates of ownership should not be issued until the merchandise is stored in substantially complete condition.

102.2(4) Delivery requirements.

a. The applicant must undertake to require the purchaser's signature, or the signature of the purchaser's legal representative, prior to the delivery of the cemetery merchandise.

b. The storage facility must undertake not to accept prepayment of delivery expenses or charges. Appropriate written disclosure that delivery costs will be billed at the time of delivery shall be provided to the preneed seller.

102.2(5) Storage requirements. The storage facility must demonstrate that the applicant has an adequate storage system that provides both accessibility and protection against damage. The storage facility must undertake that all cemetery merchandise will be substantially complete prior to storage.

102.2(6) Consent to audits and inspections. The applicant must file a written consent authorizing audits, reviews and inspections by the commissioner.

102.2(7) Statutory compliance with other state or provincial laws. The applicant shall be in compliance with all applicable laws regulating the applicant's activities as a warehouse keeper, manufacturer, supplier, or preneed seller of cemetery merchandise.

102.2(8) *Identification or personalization of merchandise.* All cemetery merchandise must be appropriately marked, identified, and described in a manner such that it may be distinguished from other similar items of merchandise, unless the commissioner has given prior written waiver of this requirement upon a showing of good cause. In all instances, the storage facility's storage system shall allow for visual inspection and counting, have storage by type or style, identify the location of the item by a shelf and bin- or slot-type system or reasonable alternative, and keep totals for each type of merchandise item in storage.

102.2(9) *Payment of accounts receivable.* The applicant shall undertake to require payment of all applicable accounts receivable within 90 days of the purchase of the cemetery merchandise.

102.2(10) *Audits and examinations.* The commissioner shall have the right to examine or cause to be examined the books, papers, records, memoranda or other documents of the storage facility and stored merchandise for the purpose of verifying compliance with Iowa Code chapter 523A and this chapter. Unless waived by the commissioner in writing, the transportation, meal and lodging expenses of the auditors and examiners shall be reimbursed by the storage facility.

102.2(11) *Reports.* The commissioner may request reports containing information about the storage program, including but not limited to the following:

a. A description of the storage facility, including the name, address of the principal business office, state or province of organization, date of organization, type of entity (e.g., corporation or partnership), and the location of all storage facilities;

b. A description of the storage program; and

c. A detailed description of all merchandise currently in storage, which shall include all of the following:

(1) The date the merchandise was first placed in storage;

(2) The full name of the purchaser or the person on whose behalf the merchandise was purchased;

(3) The location of the merchandise, which shall include the location within the facility utilizing a numbering system that provides the exact location of each item;

(4) The name and address of the preneed seller;

(5) The total number of items, by category, in storage at the facility for preneed sellers located in this state; and

(6) The total number of items, by category, in storage at the facility.

These rules are intended to implement Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559.

[Filed emergency 9/28/07—published 10/24/07, effective 9/28/07]